

October 27, 1997

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To: Federal Communications Commission
1919 M. Street, NW
Washington, DC 20554



Re: MM Docket #97-182 Pre-emption of State
and Local Zoning and land use restrictions
as it effects Tower Height/Location

Situation: One of our stations in 1991 received approval from the FAA and FCC to increase the height of our 600 foot tower by an additional 150 feet. The existing tower was approved and built in 1989 and meets local zoning requirements that are the same today as then.

The Problem: The local zoning ordinance will not approve a new tower or an extension if the tower "might" fall on adjacent landowners property. We have "T" shaped property. A neighbor property "in the T" comes within 225 feet of the existing tower. At the original zoning hearing in 1989 we were able to show (based on engineering reports) the Planning and Zoning Commission (PZC) that the fall zone of a 600 feet would not fall on the neighbor's property. Today the neighbor has experts who will tell the PZC that the existing tower or a taller tower "could" fall on the neighbors property. It is impossible to refute the "could" 100%, though we have data that it would not.

The Situation: The neighbor will agree to be supportive for some sum of money. Last quoted amount was \$100,000, though there is no guarantee. The PZC administrator last indicated he would oppose the height increase unless we could bring an engineer's "stamp certified" study that the tower would fall on our property. We do not have an engineer that will 100% guarantee against that liability. Therefore, we do not have the PZC administrator's support. We therefore continue to try to negotiate with the neighbor

The tower height increase has been delayed more than five years by this situation. It appears that we could possibly succeed by making a significant payment to two neighbors, but there is no guarantee because local politics is involved.

The Solution: The tower already exists and is properly zoned. Although FAA and FCC approvals have been secured for a height change, the height change is precluded by a local zoning board rule. The Commission should adopt a rule that pre-empts local zoning unless the reason for the zoning prohibition is specifically and demonstrably safety related. In the situation here, the issues surrounding the height increase are the same as the possibility of a tree falling upon a neighbor's farmland property. If a tree is allowed by local zoning to grow close to a property line, then there should be no prohibition on a broadcast tower based on

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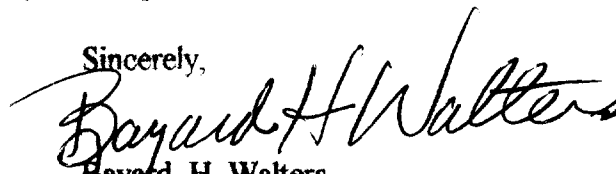
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(Solution Continued from Page #1) the proximity of a property line. Obviously, like a falling tree, if a falling broadcast tower might injure someone, the local ordinance should control. But, where the only damage might be to farmland, that injury is too speculative to support a prohibition to a modification to the tower which will result in the enhancement of broadcast service benefitting the entire community.

Conclusion: The Commission should adopt a rule that states that FCC and FAA federal governmental approvals for a modification to a broadcast tower that was properly zoned when it was built pre-empts local zoning ordinances or decisions, unless the local ordinance or decision specifically and demonstrably furthers a significant safety objective.

Summary: We would request the FCC to take precedence over local planning and zoning rules. This tower height increase for an existing tower has already received Federal approvals to improve service to citizens in a region. Those approvals are effectively being negated by one adjacent property owner who has a local rule on his side in such a way as to permit "blackmail".

Sincerely,



Bayard H. Walters
President

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